

CHAPTER 5: BINGO REGULATORY HISTORY AND TIMELINE

Overview. Bingo is the largest form of charitable/nonprofit gambling regulated by the WSGC and much, if not most, of the Commission's regulatory work in C/NP gambling has been dominated by issues arising out of Bingo.

In the debates leading up to the passage of SJR 5 in 1972 and the implementing legislation in 1973, Bingo was characterized both as a “social pastime” (what was familiarly known as church bingo) and as a potential source of problems, given the significant amounts of cash that could flow through large Bingo games. In some states, there had been (and still are) scandals associated with professional gamblers using bingo as a “front” for illegal activity.

The regulation of Bingo in Washington State has had three distinct phases. The first ran from 1973 to 1983, with minimal regulation. Games were small, and charitable/non-profit organizations were seen as innocuous, especially compared to commercial gambling. By 1983 concerns about declining profits began to arise, and these concerns persist to this day. By 1985, concerns about the rapid growth of the largest games—and their gross receipts—had also surfaced and continued into the mid-1990s.

The focus of regulation has shifted over the years. Initially the focus was orderly growth, regulation to keep the games “clean,” and assuring that monies earned were returned to the C/NP purpose. Over the years, the regulatory process has expanded, at the request of licensees, to deal with competition and market factors, while continuing to require that appropriate amounts of net income be applied to the C/NP purpose.

Changing markets and financial conditions, some of which are not subject to regulation by the Commission, have increased the challenges of regulating Bingo over the years.

Initial regulation—record-keeping, gross receipts. When the Gambling Commission was established in July 1973, it immediately addressed Bingo, Raffles and Amusement Games, as these were the activities that were “allowed under previous law...and had ongoing programs of fund raising utilizing these activities. To delay would interrupt the continuing operation of fund raising activities by many of these worthwhile groups.” [Preliminary Report to the Washington State Legislature from the Washington State Gambling Commission, Sept. 14, 1973, p.1]. The Commission also noted that “because of the charitable or nonprofit character of the organizations authorized to operate bingo, raffles and amusement games, as opposed to the much more general authorization for the use of punch boards and pull tabs, that more potential problem areas were to be found with respect to the operation and regulation of the latter activities.” [Ibid, p. 2]

By the time the Commission made its report in September 1973, it had issued 490 Bingo licenses.

The earliest regulations established by the Gambling Commission focused on two main areas: record-keeping for the large amounts of cash that flowed through Bingo games, and managing the growth of C/NP Bingo through the setting of gross receipts limits.

By December 1973, the Commission had mandated daily records for Bingo and Bingo income limitations (12/73). As licensees and the Commission gained experience with the record-keeping requirements, the Commission modified them (April 1974, November 1975, August 1977). In 1977, the Commission upgraded its audit capabilities and required additional financial information from licensees.

The initial purpose of the income limitations was to promote orderly growth. However by 1977, the Bingo income limitations had been increased, with the highest license class (H) permitting gross receipts over \$500,000. At the same time, the smallest games requested that they be exempted from licensure because of their small size, limited frequency and social/recreational purpose (rather than “revenue-gaining purposes”). This request was approved by the Legislature in SHB 90, in the 1976 Legislative Session.

Discussion continued between 1977 and 1980 regarding tightening up the financial oversight of licensees. “In fiscal year 1980, the Gambling Commission announced its intention to increase the emphasis on financial investigative or audit-type requirements.” (WSGC 1980 Annual Report, page 5). The Commission also requested revisions to the RCW that tightened the definition of a “bona fide member” of a charitable organization and of “bona fide charitable or nonprofit organization.” In the Commission’s own words, “the proposal provides more definitive language to assist in determining the eligibility of non-profit organizations and members thereof to obtain a gambling license...” (1980 WSGC Annual Report, page 11). This action was in response to a significant increase in the number of organizations applying for gambling licenses, many of which appeared to be of questionable status as true charitable or nonprofit groups. The strengthened definitions assisted the commission in screening out the problem applicants.

Regulation of growth and competition. By 1983, the impacts of growth and competition within the Bingo market were being felt. Licensees from the Spokane area came to the Commission expressing concern that high prize payouts by large games in that area were hurting the smaller games. The Commission formed an ad hoc study group to examine the problem in more detail. This began a series of attempts by the Commission to regulate prize payouts and net income.

The 1983 WSGC Annual Report stated “early in their deliberations, the committee determined that there was a need to establish some additional bingo controls to ensure that net profits to the organizations were protected.”

This was an important development, as it suggested that licensees expected the Commission to regulate not only to keep illegal activity out of Bingo games and to assure that income generated went to the appropriate C/NP purpose, but also to protect the profits of those organizations who chose to utilize Bingo as a fundraising strategy.

Interestingly, further study by the Commission (Bingo in Washington State-1986: Past, Present and Future) showed that the actual problem of declining net income probably began in 1980-81, as the level of growth in C/NP bingo leveled off. The impact may not have been felt until 1983, but the trend had been developing for several years.

This realization was part of an overall acknowledgement by the Commission that “while bingo may have at one time been an incidental activity, conducted as much for social purposes as fund raising, it has evolved into a major funding source for many of

Washington's charitable/nonprofit organizations." (Bingo in Washington State—1986, page 1).

The report went on to say (page 2):

This evolution from primarily a recreational activity to a major fund-raising activity has not been without its problems. Over the past two years, the Gambling Commission has had to face some tough questions related to the legislative intent in the area of bingo. These questions included: Should there be limits to the size of games and, if so, based on what criteria; Should there be restrictions placed on the use of income derived from bingo; Should traditional "charities" (providing for the physical well-being of the needy) be given priority or should a broader definition be given to charity; and Should there be further limitations placed on salaries and other expenses.

In response to the work of the Study Committee, the Commission issued an emergency rule on prize payout limits so that they could be tested (April through September, 1983) for effectiveness. The limit was 80% for licensees generating over \$125,000 in gross receipts per quarter, down to 68% for licensees grossing more than \$750,000. Monthly reports were required.

The rule was made permanent in October 1983, so that the Commission would not have to continue to extend the emergency rules. The permanent rule limited gross receipts to \$3.5 million and restructured them. The rule also modified the prize payout limits to begin at 80% of \$500,000 gross receipts, with a 2 percentage point decrease for every license class increase. The rule added a minimum net income requirement. The rule, because licensees felt it needed continued review, had a sunset provision. The Commission also removed all controls from games that did not exceed \$500,000 in annual gross receipts.

Over the next year, it became apparent that the limits on gross receipts and payouts and related net income requirements were not working well and they were changed again in June, 1985. Gross receipts continued to be limited to \$3.5 million. Prize payouts were shifted to annual limits, with variable rates beginning at 83% for games grossing over \$500,000 and decreasing to 70% for games at the \$3.5 million level. Net income requirements were made annual, ranging from 4% for games grossing \$500,000 to 14% for those grossing \$3.5 million.

All of this regulation was intended to limit prize payouts by the larger games so that smaller games could succeed, and to require that a certain level of net income be generated and applied to the charitable/nonprofit purpose. The regulation also limited outright the maximum size of any Bingo game. Games grossing under \$500,000 (Classes A-E) were exempted from limits.

After a three-year "break" from rule proposals in this area, the maximum size of Bingo games became an issue again in 1988. The larger games were reaching the \$3.5 million gross receipts limit and wanted the limit increased. The Commission formed a committee to study the matter further. In 1988, a temporary rule was passed to allow an increase in the gross receipts limit if 14% of the gross amount above \$3.5 million was donated to a charitable cause. In 1988, the Commission also added two new license

classes over \$4.0 million in gross receipts (Classes L and M), and added back limits for licensees in Classes D and E.

Problems with meeting the net income requirements as the key regulatory issue.

By 1990, the focus of regulation had shifted from dealing with the size of games to dealing with net income requirements. Growth in net income had flattened between 1988 and 1990 and licensees were having trouble achieving the required net income levels.

The response was to change how income could be computed. Licensees were permitted to add income from punchboards and pull tabs (PB/PT) and snack bars to their income totals, and were permitted to show their local taxes as a credit (thus reducing expenses). In return, the new net income requirements were one percentage point to 2.5 percentage points higher than the 1989 net income requirements. Small games were required to have a positive cash flow if they paid wages or rent related to their Bingo game.

By 1993, licensees were once again having trouble meeting their net income requirements. Bingo net income, after a bounce in 1991, was actually declining, and proceeds from PB/PT were flat or declining. The Commission reduced the net income requirement by one percentage point across the board, and gave the Director the authority to grant variances based on local conditions.

The problems persisted and in 1995, the Commission put a moratorium on enforcement while a new Bingo Task Force studied the problem.

In 1996, the Bingo Task Force recommended a number of changes. These included adding from sales of food, drink, other and PB/PT to overall income and renaming it “net return,” reducing the net return requirement (again), by one-half to one percentage point, and dividing the rule into three parts (requirements, variances and sanctions). The Task Force recommended adding four new license classes (over \$4.0 million) to permit additional growth. Prize payout limits were raised 1 to 2 percentage points. Limits were imposed on Class D Bingo. Class D and E gross receipts ranges were changed. The Commission promulgated these changes in 1996. Mandatory prize payout limits were changed to guidelines.

The Task Force also recommended that Bingo games be enhanced in a number of ways, including liberalized promotions, different schemes, etc., and suggested new variations for PB/PT games.

By 1998, the licensees were again reporting declines in their activity. In response, in 1999, the Commission placed a temporary moratorium on the net return requirements and established a Bingo Net Return Task Force to address the issues. Meanwhile, the moratorium reduced the net return requirements by five percentage points across the board.

The Bingo Net Return Task Force reviewed the history of net income and net return regulation and recommended that the net return requirements be modified to cluster classes of licensees into “bands” and to create a blended rate (base amount plus percentage over that amount) for the required minimum net return. In cases where the

minimum net return was not met, prize payout limitations and other penalties could come into play.

New rules passed by the Commission in 2001 codified this approach, renaming it the “minimum cash flow” requirement. Adjusted cash flow was defined as all income from the bingo operation (including snack bar, PB/PT, raffle and amusement game income) less all prizes and expenses. Depreciation/amortization of the bingo facility was not counted as an expense of the bingo operation, but the tax credit for local taxes was removed, as local taxes were seen as a cost of doing business. Licensees were required to maintain positive cash flow and failure to maintain positive cash flow for two consecutive quarters would result in summary license suspension.

The adjusted cash flow requirement was applied to four different levels (bands) of gross receipts per quarter, to licensees in Class D and above.

In 2003, the Commissioners and staff requested a change to the minimum cash flow rules, which had been difficult to administer. In 2004, in response to this request, the Commission changed the measurement of gross receipts amounts to calendar years (rather than quarters) and allowed a licensee one chance every four years to make a 25% reduction in the required adjusted cash flow. This one-time reduction replaced the variances previously allowed, and was in lieu of an automatic license revocation. The requirement to maintain positive cash flow was continued, and failure to maintain positive cash flow for two consecutive quarters still resulted in summary license suspension.

Market conditions. While the regulatory process for charitable and nonprofit bingo occurs within the purview of the Washington State Gambling Commission, the licensees operate in the larger gambling market in the region. This means that licensees are competing with Tribal and commercial gambling activities in Washington and bordering jurisdictions.

Competition can take at least three forms. One is geographic—the more gambling options within a reasonable driving distance, the more fragmented the gambling market will be. The greater Puget Sound region is a good example of this phenomenon.

Another form is the nature of the Bingo games. Tribal organizations offering gambling, and in some cases operators in adjacent states and provinces, can attract Washington state gamblers to games (slot machines, for example) that are not available in Washington State. There are also anecdotal suggestions that Tribal Bingo is provided as a “loss leader” to get gambling customers to come to Tribal facilities, with the intent of “upgrading” the bingo customer to a casino customer.

A third factor is the experience the gambling customer has at the Bingo hall, casino or other facility. This can range from the newness of the facility to lighting, to the amenities (snack bar, etc.) available. The potential for a ban on smoking in all public places (which will affect C/NP and commercial gambling operators but not Tribes) is the most recent development that could affect the gambling customer's experience.

History of prize payout and net income/return and adjusted cash flow regulation

DATE	REGULATION STATUS
Prior to 1983	No regulation.
1983	Declining profit from Bingo and prize "wars" prompts emergency temporary prize payout limit rule: <ul style="list-style-type: none"> Beginning at \$125,000 per quarter = 80%, down to 68% for over \$750,000 Required monthly reports Licensee and staff Study Committee formed.
1984	Permanent rule: <ul style="list-style-type: none"> Restructured gross receipts and limited to \$3.5 million. Modified prize payout limits to begin at \$500,000 = 80% with 2 percentage point decrease for every license class increase. Added minimum net income requirement. Required annual review of rule ("sunset" provision).
1985	Gross receipts limited to \$3.5 million (continued). Prize payouts: <ul style="list-style-type: none"> Both quarterly and annual limits Annual = variable rates beginning at 83% for \$500,000, decreasing to 70% for \$3.5 million. Net income: <ul style="list-style-type: none"> Annual limits only Annual = 4% @ \$500,000 up to 14% for \$3.5 million.
1988	Larger games started to reach \$3.5 million gross receipts limit. Committee formed to discuss increasing gross receipts limit. Temporary increase in gross receipts limits if 14% of the excess beyond \$3.5 million was donated to any charitable cause.
1989	Added two new license classes (L, M) over \$4.0 million. Classes D and E now covered by limits. Removed requirement for annual review of rule.
1990	Added PB/PT and Snack Bar to the net return mix (net income). Net income increases 1 to 2.5 percentage points for Bingo/PB/PT licensees. Allowed local tax as a credit (reduces expenses). Increased prize payout limits by 1 to 2.5 percentage points. Reduction in net income limits by one percentage point if no PB/PT. Required small games (up to \$100,000) to have positive cash flow if rent or wages paid. Added requirement for minimum net income from PB/PT for non-profits without a bingo license.
1993	Legislature changed RCW 9.46.070 (10) and (16) to make them discretionary. Decreased net income requirement by 1 percentage point for bingo only and PB/PT. Allowed variances (Director approved) for local conditions. <ul style="list-style-type: none"> Added enforcement guidelines and procedures (mandatory downgrade). Added penalties for bingo managers for prize payout violations. Codified staff procedures.
1994	Significant progress rule passed.

DATE	REGULATION STATUS
1995	<p>Licensees were having a hard time meeting net income requirements.</p> <p>October 1995 emergency moratorium—no mandatory downgrade if within 2.5% of the net income requirements for the licensee's license class (modified to 4.5% in permanent rules).</p> <p>Formed Bingo Task Force.</p>
1996	<p>Bingo Task Force Recommendations:</p> <ul style="list-style-type: none"> ▪ Change to net return from net income. ▪ Split the net return rule into three separate rules: requirements, variances, and sanctions ▪ Added four new license classes (over \$4.0 million) ▪ Class D and E GR ranges change, Class D removed from regulation ▪ Reduced net return requirement (new def.) across the board by 0.5 to 1 percentage point. ▪ Deleted the prize payout limits (became guidelines only) ▪ Deleted penalties for bingo managers ▪ Codified difference between bingo for "fund-raising" or "social" purposes ▪ Allowed electronic POS transactions ▪ Liberalized promotions (coupons, promotional gifts, birthday gifts, frequent player points, drawings, creativity and originality contests, birthday bonus, free games as prizes and good neighbor prizes) ▪ Liberalized Raffles—discount sales, prizes for selling tickets, and credit cards for phone sales. <p>Other significant changes to Bingo:</p> <ul style="list-style-type: none"> ▪ Liberalized promotions; free food, etc. ▪ Pre-sale of games and gift certificates ▪ Authorized electronic daubers ▪ New games authorized (keno bingo, satellite bingo, 3# speed bingo and hidden face bingo) ▪ Authorized "second element of chance" schemes ▪ Mandatory throw-away cards for large games ▪ Make it a violation to have a loss from a snack bar, if not in compliance with net return.
1998	Licensees seeing another decline in activity; changing market conditions.
1999	<p>Temporary moratorium on bingo net return requirements instituted in January.</p> <p>Bingo Net Return Task Force established.</p>

DATE	REGULATION STATUS
2000	<p>Changes streamlined bingo rules. Gambling proceeds, net return and the qualification to be considered an active member were redefined; the retention period of some bingo records was reduced; political contributions were no longer required to be reported to the commission, as they are reported to the Public Disclosure Commission; electronically generated formats for inventory control were allowed as an inventory control format; bingo operators were allowed to offer free and discounted food and non-alcoholic beverages to their players; language was added to clarify that a maximum of 66 electronic bingo cards could be played at one time; and language that was redundant with other rules was removed for streamlining purposes.</p> <p>New rules allowing free food and beverages. Minimum net return rules proposed, carried forward into 2001. Positive cash flow required. Significant progress rule updated. Minimum net return modified to blended rate calculation; to “band” groups of license classes, to set base amounts and % of net income over base amounts; prize payout limitations and other penalties in certain circumstances where minimum net return is not met.</p>
2001	<p>Minimum cash flow requirements set; adjusted cash flow defined as all income from the bingo operation less all prizes and expenses, with depreciation/amortization not counted as an expense of the bingo operation. Added profit from Amusement Games and Raffles (income side) Adjusted cash flow applied to four different levels of gross receipts per quarter, applied to Class D and above. Summary license suspension for failure to maintain a positive cash flow for two consecutive calendar quarters.</p>
2002	<p>Statutory authorization for bingo operators to share a facility and operate seven days a week.</p>
2003	<p>Request from licensees to modify the minimum cash flow rules (due to continuing problems with meeting the minimum cash flow requirements). Petition for variance portion of the minimum cash flow requirements removed due to complexities in administering it.</p>
2004	<p>The gross receipts amounts were set to calendar year (instead of quarters), and there was a 25% reduction permitted to the required adjusted cash flow every four years at the request of the licensee. One-time reduction in lieu of automatic revocation of bingo license. Summary license suspension for failure to maintain a positive cash flow for two consecutive calendar quarters continued.</p>

BINGO TIMELINE
STATUTORY / REGULATORY / CONTEXTUAL EVENTS

DATE	CONTEXT	RCW	WAC	DISCUSSION
1973-1976	<p>Implementing legislation for SJR-5, 1973.</p> <p>In 1976, growth in size for largest operators resulted in their request to increase the \$300,000 max in gross receipts. (Gross receipts regulated by Commission).</p>	<p>SHB 90 Allows bingo up to three times a week, offered by charitable and non-profit orgs. Places limits on income to be derived from bingo</p> <p>Receipts can be taxed but not greater than 10% of gross.</p> <p>Smallest operators exempted from limits and licensure in some cases.</p>	<p>WAC 230-20-250 Bingo income limitations (rules filed 12/19/73, 12/30/75, 5/25/76, 9/10/76)</p> <p><i>Repealed 1/7/77</i> License classes based on size—gross receipts (1974) Increased limits for gross receipts to over \$500,000</p>	<p>Income limitations were intended to limit/manage growth responsibly.</p> <p>Class H license added in 1975</p> <p>License class change to relieve reg burden on smallest operators (A,B) in 1976.</p>
1977-83	Commission upgrades audit function.		<p>WAC 230-20-251 Requiring comprehensive financial information</p> <p><i>Repealed 12/12/83</i></p>	Assure uniformity in reporting, to make review of records more efficient.
Early 1980s	Tribal bingo increases, becomes large-scale; impact on C/NP bingo. Rate of growth slows starting in 1980.			Change in C/NP market share, gross receipts. Impact not seen overall until 1984
1983	<p>Bingo Task Force formed in response to complaints that “prize wars” in the Spokane area were hurting smaller operators.</p> <p>Data from temporary rule showed that unregulated prize amounts were indeed hurting smaller operators.</p>		<p>WAC 230-20-061 Rule for temporary prize limits (9/13/83 through 12/13/83)</p> <p><i>Replaced by permanent rule</i> (see below)</p>	Regulatory discussion focused on size of game (smaller games proposed to be exempted from income regulation); and pros and cons of regulating based on gross or net income..

DATE	CONTEXT	RCW	WAC	DISCUSSION
1984 Final Rule	Results of work of Bingo Task Force and testing of temporary rule.		<p>WAC 230-20-063 (Limits on gross receipts and prize payments and regulation of net income</p> <ul style="list-style-type: none"> removed all controls from games with less than \$500,000 in annual gross receipts. Prize payout requirements only increased by 2-3% of GR across the board Increase in minimum net return required (% of GR) to assure continued support of charitable/non-profit purpose Set maximum limit of \$3.5 million in annual gross receipts <p><i>Repealed 6/14/85.</i></p>	<p>The consensus was that if a C/NP organization could not meet a minimum standard for net return to its non-profit purposes, the purpose or viability of the bingo activity was called into question.</p> <p>The goals of this rule included:</p> <ul style="list-style-type: none"> to stop the prize wars (and declining net incomes) that were placing many (smaller) games in jeopardy. to assure that growth would be directly related to nonprofit purposes to manage the growth of games in an orderly manner (i.e., not too-rapid growth)
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DATE	CONTEXT	RCW	WAC	DISCUSSION
1985-1996 (overall)	Continued efforts to manage gross receipts, net income, prize payouts. See detail below.		WAC 230-20-064 6/14/85 6/16/87 3/15/88 7/1/89 7/1/90 7/18/93 4/6/94 1/5/95 2/9/96 7/1/96 <i>Repealed 12/22/96</i>	Largest licensees exceeded gross receipts limits in 1988-89
1985	Continued work on gross receipts limits and prize payouts		Gross receipts still limited to \$3.5 m. Prize payouts limited on Q and A basis, variable rates based on size Net income limits set at 4% for \$500,000 gr up to 14% for \$3.5 m gr	
1986 (?)	Thoresen-Peterson Planning Group study "Impact Analysis of Bingo in the State of Washington"			Attempted to show social and economic benefits of bingo, advocated increasing payout levels to compete with Tribal bingo.
1988	Larger games start to reach the \$3.5 m limit.		Temporary increase in gross receipts limits if 14% of the excess over \$3.5 m went to (any) charity	

DATE	CONTEXT	RCW	WAC	DISCUSSION
1989	Decision to deal with growth in gross receipts		Two new license classes, L,M added for \$4.0 m + games; limits placed on D and E class licensees	
1990	Problems with licensees meeting the net income requirements produces changes in how income is regulated		Net income changed to add PB/PT and snack bar net income as part of income of bingo operation In exchange the net income requirement was increased by between 1 and 2.5 percentage points.	Intent was to count all income of the bingo operation and require a higher level of return to the charitable purpose.
1993	Problems again for licensees in meeting net return requirements.		Net income requirement decreased by one percentage point across the board.	
1995	Problems again for licensees meeting net return requirements. Bingo Task Force formed.		Emergency moratorium on enforcement of net income rules.	
1996	Bingo Task Force recommendations		Added four new license classes over \$4.0 m. (N, O, P, Q) Changed to net return req. by 0.5 to 1.0 percentage point, added AG and R income Deleted prize payout limits Liberalized promotions Added new game features	Adopted 11-96, Effective 12/22/96 Attempt to make games more competitive, allow licensees to comply with income requirements.

DATE	CONTEXT	RCW	WAC	DISCUSSION
1998	Licensees see another decline in activity			
1998			Linked Bingo game rules pass, effective 1/1/99	
1999	Bingo Net Return Task Force established.		Temporary moratorium on net return req. Net return reduced 5 percentage points across the board.	
2001	Net return changes		<p>Blended rate for bands of licensees, set base amount and % above base amount. Set prize payout limits and other penalties if min. net return not met.</p> <p>Defined adjusted cash flow as all income from the bingo operation less all prizes and expenses (not counting amort. and deprec.). Applied to Class D and above.</p> <p>Summary license suspension for failure to maintain positive adjusted cash flow for two consecutive calendar quarters</p>	Attempt to assist licensees to compete and to comply with requirements for returning funds to the stated purpose.

DATE	CONTEXT	RCW	WAC	DISCUSSION
2002		Bingo increased to seven days a week passes, shared facilities and management allowed.	Shared management and shared facilities allowed	Goal was to allow bingo operators to conserve funds so that they could use monies for the charitable purpose, not expenses.
2003			WAC 230-20-059—Minimum cash flow requirements revised. Petition for variance repealed.	Variance provision difficult to administer; replaced in 2004 by licensee option to request once every four years reduction in adj. cash flow.
2004			WAC 230-20-059—Minimum cash flow req. revised. One-time 25% reduction in adjusted cash flow allowed at request of licensee (replaces variance). Gross receipts set to calendar year rather than quarters. Continuation of summary license suspension for failure to maintain positive adjusted cash flow for two consecutive calendar quarters.	